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## Reasons for decision

Ko Kuffuor,

*complainant,*

*and*

United Steel, Paper and Forestry, Rubber,  
Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (United Steelworkers)

*respondent,*

*and*

Aeroguard Eastern Ltd.,

*employer.*

Board File: 28838-C

Neutral Citation: 2011 CIRB 618

December 19, 2011

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A panel of the Canada Industrial Relations Board (the Board) composed of Mr. William G. McMurray, Vice-Chairperson, and Messrs. David Olsen and John Bowman, Members, considered the complaint.

These reasons for decision were written by Mr. John Bowman, Member.

## **Parties' Representatives of Record**

Mr. Ko Kuffuor, for himself;

Ms. Cathy Braker, for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers);

Ms. Rina White, for Aeroguard Eastern Ltd.

## **I-Introduction**

[1] The complainant, Mr. Ko Kuffuor, has been employed as a pre-board screener at the Ottawa International Airport since June of 2010. He was employed by Aeroguard Eastern Ltd. (the employer), who provides security services at the airport for the Canadian Air Transport Security Authority (CATSA), on a contract basis. In early June of 2011, an incident occurred at work that led to the complainant receiving a one-day suspension from the employer. The complainant's union, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (United Steelworkers, or the union) filed a grievance regarding the suspension.

[2] Not long after receiving the one-day suspension, the complainant booked off work on medical leave. Since that time, there have been ongoing shift scheduling issues between the complainant and the employer, which eventually led to the union filing another grievance on behalf of the complainant. On June 30, 2011, the complainant filed a complaint with the Board alleging that the union acted in an arbitrary and discriminatory manner, and in bad faith, in its representation of him, contrary to section 37 of the *Code*.

[3] Since a grievance had already been initiated and had yet to be resolved at the time the complaint was filed, the Board must first decide whether or not this complaint was filed prematurely.

## **II—Overview**

[4] On June 4, 2011, two incidents occurred at work where the complainant allegedly violated standard operating procedures. The employer held a meeting to discuss the incidents with the complainant and a union representative on June 12, 2011. The employer issued a one-day suspension to the complainant that same day. Shortly thereafter, a grievance was filed alleging breaches of articles 6.07 and 20.11 of the collective agreement. Article 6.07 requires the parties to maintain a respectful work environment, while article 20.11 deals with the disciplinary process in the collective agreement. The employer denied the grievance at stage one of the grievance procedure in a letter to the union dated June 16, 2011.

[5] During the weeks after the grievance was filed, the complainant exchanged email correspondence with his union representative. A union representative advised the complainant on June 22, 2011, that the grievance had been rejected by the employer at stage one of the grievance procedure. The complainant was further advised by a union representative on the following day that the grievance was being advanced to the next stage of the grievance procedure. On June 23, 2011, the complainant informed the union that he had been talking to a staff member at the Board about his case and that he was dissatisfied with the way he had been treated by the employer. On June 30, 2011, the complainant filed his section 37 complaint with the Board.

[6] After the filing of the complaint, the union continued to correspond with the complainant. The complainant, along with other members of the bargaining unit, experienced issues regarding his work schedule during the period of June 2011 and thereafter. (The complainant had previously raised scheduling issues in the fall of 2010, which resulted in a grievance being filed that was resolved between the parties.) Although the union had filed a general grievance regarding the 2011 scheduling issues, it also filed an individual grievance regarding the complainant's schedule on August 18, 2011, after the complainant raised his scheduling issues as part of his complaint with the Board. On September 1, 2011, the union sent the complainant a letter asking to meet with him to

discuss his grievances regarding the one-day suspension and his schedule. The complainant declined to meet with the union.

### **III—Positions of the Parties**

#### **A—The Complainant**

[7] The complainant filed a very lengthy complaint and followed that up with many different submissions. While the Board has read all of the submissions, the following is a brief summary of the complaint. The complainant submits that the union acted in an arbitrary and discriminatory manner, and in bad faith, by failing to enforce various provisions of the collective agreement and failing to defend his interests. The complainant alleges that the union acted in an arbitrary manner by ignoring his concerns, failing to handle his grievance in the manner he wanted and not treating him as a union member because he worked part time. He alleges that the union acted in a discriminatory manner by not recognizing his medical condition and by not addressing issues of racism in the workplace. The complainant also submits that the union acted in bad faith by ignoring him and “shutting him out.”

[8] As a remedy for the alleged breach of section 37 of the *Code*, the complainant seeks compensation for time lost from work, an order from the Board forcing the union to address various workplace issues, and reimbursement for his costs in filing this complaint.

#### **B—The Union**

[9] The union submits that it has met its obligations under the *Code*, that it has filed grievances regarding the issues raised by the complainant, and that it is trying to set up a meeting with the complainant in order to determine how it will handle the grievances. The union denies ignoring the complainant, and points out that it is trying to involve the complainant in its investigation of the grievances. The union also submitted that the complaint was premature since a grievance was filed

regarding the one-day suspension at the time this complaint was filed with the Board, and the scheduling issues raised by the complainant in his complaint are being addressed through a new grievance as well as a group policy grievance that had been filed prior to the complaint. The union asks the Board to dismiss the complaint.

### **C–The Employer**

[10] Although the employer was given the opportunity to file a submission regarding the complaint, no submission from the employer was received.

### **IV–Analysis**

[11] The Board has exercised its discretion pursuant to section 16.1 of the *Canada Labour Code* (*Part I–Industrial Relations*) (the *Code*) to decide this matter without an oral hearing.

[12] Section 37 of the *Code* requires unions to act in a manner that is not arbitrary, discriminatory, or in bad faith when they represent a member with respect to their rights under the relevant collective agreement. Most such complaints arise when the member is unhappy over how the union is handling a particular grievance. Such complaints generally involve situations where a union has declined to advance a grievance to arbitration, or where a union refuses to file a grievance in the first place. In those cases, the Board looks at the union's decision to see if that decision is contrary to the requirements of section 37. A union is not required to grieve all issues, nor is it required to take every grievance to arbitration, however, the union **is** required to make such decisions in a manner that is not arbitrary, discriminatory, or in bad faith.

[13] A difficulty arises in cases such as this one where the member files a complaint with the Board under section 37 where a grievance has already been filed and is being actively pursued by the union. In this case, the complaint was filed only a few weeks after the filing of the original grievance on the one-day suspension. Subsequent issues regarding work scheduling arose, which the union addressed

by filing a second grievance. The problem for the Board when complaints are filed prematurely while grievances are still proceeding is that there is really no “decision” of the union for the Board to review. In other words, until the grievance has run its course and the union has made a decision either to withdraw the grievance, settle the grievance, or resolve the matter through arbitration, the Board is not in a position to evaluate whether the union’s actions were arbitrary, discriminatory, or in bad faith.

[14] The Board must ensure that section 37 complaints are not used to short circuit the grievance/arbitration process in the collective agreement. In this case, the grievance had barely been filed before this complaint was filed with the Board. The complainant then began raising new issues involving his work schedule as part of his complaint, without first addressing such issues with the union. The grievances that have been filed must run their course before they can be the subject of a duty of fair representation complaint. For this reason, the Board must dismiss the complaint as there is no basis to find that the union breached its duty of fair representation.

[15] The Board encourages the union to continue its efforts to work with the complainant to investigate the grievances and to keep him informed as to the status of those grievances. The Board also reminds the complainant of his responsibility to protect his own interests and his obligation to cooperate with the union. As the Board noted in *McRae/Jackson et al*, 2004 CIRB 290:

[15] The union’s duty of fair representation is predicated on the requirement that employees take the necessary steps to protect their own interests. Employees must make the union aware of potential grievances and ask the union to act on their behalf within the time limits provided in the collective agreement. They must cooperate with their union throughout the grievance procedure, for example by providing the union with the information necessary to investigate a grievance, by attending any medical examinations or other assessments.

[16] Employees must follow the union’s advice as to how to conduct themselves while the grievance process is underway. ...

[17] If an employee is neglectful in any of these regards, a claim before the Board will likely be unsuccessful. (see *Jacques Lecavalier* (1983), 54 di 100 (CLRB no. 443)).

## **V –Conclusion**

[16] The complaint is dismissed as there is no basis at this time to find that the union breached its duty of fair representation.

[17] This is a unanimous decision of the Board.

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William G. McMurray  
Vice-Chairperson

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David Olsen  
Member

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John Bowman  
Member